

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 90 OF THE CODE OF ORDINANCES ENTITLED "ADMINISTRATION" BY AMENDING SECTION 90-392 AND BY ADDING SECTION 90-398 TO AUTHORIZE THE CITY PLANNER TO ISSUE ADMINISTRATIVE VARIANCES, ESTABLISH PROCEDURES FOR AN APPLICATION FOR ADMINISTRATIVE VARIANCES, ESTABLISH A PROCEDURE FOR PROVIDING NOTICE TO ADJOINING PROPERTY OWNERS OF THE CITY PLANNER'S INTENT TO ISSUE AN ADMINISTRATIVE VARIANCE, TO ESTABLISH CRITERIA FOR THE ISSUANCE OF ADMINISTRATIVE VARIANCES AND ESTABLISH A PROCEDURE FOR PUBLIC HEARINGS ON APPLICATIONS FOR ADMINISTRATIVE VARIANCES; AMENDING CHAPTER 122 ENTITLED "ZONING" BY AMENDING SECTION 122-28 AND ADDING SECTION 122-32 (G) TO ESTABLISH PROCEDURES FOR NONCONFORMITIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Key West Planning Department has recommended a formal procedure for the consideration and granting of administrative variances; and

WHEREAS, the Planning Board at its meeting of June 20, 2013 found consistency with the City of Key West Comprehensive Plan; and

WHEREAS, the City Commission finds that an administrative variance procedure would promote the health, safety and welfare of the citizens of Key West.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST,  
FLORIDA:

Section 1: That Section 90-392 of the Code of Ordinances  
is hereby amended as follows\*:

**Sec. 90-392. Application**

(a) All applications for variances from the land development regulations shall be in the form required and provided by the city planner. Such application shall be submitted to the city planning office together with the fee established by resolution of the city commission. A completed application shall include the application form, the fee and all required supplemental information necessary to render determinations related to the variance request.

(b) Upon receipt of an application for a variance, the planning board shall hold a public hearing upon the application in accordance with the procedures cited in section 90-393 and shall render an order granting or denying such application. In granting such application the planning board must make specific affirmative findings respecting each of the matters specified in

\*(Coding: Added language is underlined; deleted language is ~~struck through~~. Language added after first reading of this Ordinance is double underlined; language deleted after first reading of this Ordinance is ~~double struck through~~.)

section 90-394 and may prescribe appropriate conditions and safeguards, including requirements in excess of those otherwise required by these land development regulations, which shall become a part of the terms under which a development order may be issued. When appropriate, as prescribed in section 90-398, the city planner may treat an application for variance as an application for administrative variance.

Section 2: That Section 90-398 is hereby added to the Code of Ordinances as follows:

Sec.90-398. Administrative Variances.

(a) The purpose of this section is to establish authority, procedures and standards for the granting of administrative variances and waivers from certain requirements of this chapter.

(b) Subject to the provisions contained herein below, the city planner is authorized to grant the following variances and waivers according to the standards contained in subsections ~~(#h)~~ and ~~(#i)~~ of this section:

(1) Reduction in the front, rear yard, and non-shoreline setback requirements in chapter 122, article IV, by no more than ten feet and side yard setback by no more than 20 percent;

~~(2) Reduction in the off-street parking requirements in chapter 108, article VII by no more than 20 percent;~~

~~(#2) Reduction in all street and landscaping buffer~~

yard width requirements in chapter 108, article VI by no more than ten percent;

(43) Reduction in the total area of landscaping required for off-street parking and loading in chapter 108, article VII, subdivision II by no more than ten percent.

(c) An application for an administrative variance or waiver under this section shall be submitted to the city planner on a form approved by the city planner.

~~(d) The fee structure for an administrative variance or waiver will be \$750.00, plus \$50.00 fee for Fire Department review, and \$100.00 advertising fee, and the fee structure for an after-the-fact administrative variance or waiver will be \$1,500.00, plus \$50.00 fee for Fire Department review, and \$100.00 advertising fee.~~

(ed) All applications for administrative variances or waivers shall be considered by the Development Review Committee pursuant to its customary process.

(#e) The city planner willshall complete his or her review of the entire application and render a proposed decision within three (3) weeks of the Development Review Committee meeting.

(gf) The city planner's proposed decision shall be in writing.

(hg) Prior to rendering a proposed decision, the city planner shall consult with and obtain concurrence of his or her

decision by the City Manager, or the City Manager's designee.  
With the exception of the special accessibility setback variance  
as provided for in subsection (\*j) of this section, approval of  
an administrative variance shall only be proposed or granted if  
all of the standards in subsection (h) and (i) of this section  
are met.

(ih) The city planner shall recommend approval or approve  
an administrative variance under this section if the applicant  
demonstrates that all of the following standards are met:

(1) The applicant shall demonstrate a showing of good  
and sufficient cause, as follows:

a. the request deals solely with the physical  
characteristics of the property, subdivision lot or  
land parcel under question; and

b. the request is not based on the character of  
the planned construction or substantial improvement,  
the personal characteristics of the owner or  
inhabitants; and

c. the request is not based on inconvenience,  
aesthetic considerations, physical handicaps, personal  
preferences, the disapproval of neighbors or  
homeowners' association restrictions;

(2) Failure to grant the administrative variance would  
result in exceptional hardship to the applicant;

(3) Granting the administrative variance will not result in increased public expenses, create a threat to public health and safety, create a public nuisance, or cause fraud or victimization of the public;

(4) The property has unique or peculiar circumstances, which apply to the subject property, but which do not apply to other properties in the same zoning district;

(5) Granting the administrative variance will not give the applicant any special privilege denied to other properties in the immediate neighborhood in terms of the provisions of this chapter or established development patterns;

(6) Granting the administrative variance is not based on disabilities, handicaps or health of the applicant or members of her/his family; and

(7) The administrative variance is the minimum necessary to provide relief to the applicant.

(#i) The city planner may recommend approval or approve an administrative variance or waiver that modifies the minimum front yard requirements set out in zoning districts in Chapter 122, Article IV, provided the applicant demonstrates that:

(1) The existing setback average, as measured pursuant to the definition of "setbacks" in section 86-9, on the block of the street within the land use district in which

the subject property is located is less than the land use district standard, as established in zoning districts in chapter 122, article IV; and

(2) The waiver will not result in a setback that is less than the existing front yard setback to the furthestmost projection of the main building that is closest to the front lot line on a contiguous lot on either side of the subject property; and

(3) The waiver is for an amount not greater than 20 percent of the land use district standard as established in the zoning districts in chapter 122, article IV; and

(4) In the event that a contiguous lot on either side of the subject property is vacant, the land use district standard shall apply.

(~~h~~) Notwithstanding the standards in subsections (~~i~~) ~~h~~(1), (4), (5), (6) and (7) of this section, an administrative variance from ~~the~~ any yard setback requirements may be granted for an elevator or wheelchair lift or ramp required to allow access to the elevated dwelling unit of a disabled applicant or disabled member of ~~her/his~~ the applicant's household.

(~~k~~) Public notification of proposed approval. In the event the city planner determines that an application for an administrative variance or a waiver complies with the requirements of this section, the city planning department shall

provide written notice of proposed approval and require posting as follows:

(1) The planning department shall provide written notice by regular mail to owners of real property located within 300 feet of the property which is the subject of the proposed administrative variance or waiver.

(2) Planning Staff shall post the property which is the subject of the proposed administrative variance or waiver with a waterproof sign of at least four square feet in front surface area, which is lettered so as to be easily visible from all public streets and public ways abutting the property.

(3) The notice and posting shall provide a brief description of the proposed administrative variance or waiver; indicate where the public may examine the application; and indicate the 30-working day period within which to request a public hearing pursuant to subsection (n) below or submit a written response. The cost of providing notice and posting shall be borne by the applicant.

(m1) In the event a public hearing is not requested within the period provided in subsection (en) below, the city planner shall review all public responses to the application for administrative variance or waiver ~~application~~ with respect to

whether the proposed administrative variance or waiver~~—and~~  
complies with the requirements and standards of this section,  
and, thereafter, the city planner shall issue a written decision  
approving or denying the administrative variance.

(am) In the event the city planner issues a written  
decision denying a requested administrative variance, the  
applicant may file a written objection to the denial, which  
shall be deemed an application for a variance pursuant to  
section 90-392, which shall be subject to procedures pertaining  
to variances as contained in sections 90-391 through 90-397 of  
the Code of Ordinances.

(en) Public hearing by the Planning Board. If requested in  
writing by an aggrieved or adversely affected party, as defined  
by section 163.3215(2), Florida Statutes, during the required 30  
working days of posting, a public hearing by the Planning Board  
shall be scheduled at the next available hearing date. The  
public hearing shall be conducted in accordance with the  
procedures pertaining to variances as contained in sections 90-  
391 through 90-397 of the Code of Ordinances.

(eo) Reapplication for the same or similar piece of  
property requesting the same or a similar administrative  
variance from the land development regulations cannot be made  
within two years from the date the application was originally  
denied by the Planning Board or city planner. An applicant may,

however, submit a substantially different application or reapply based on changed conditions and/or the advent of new information which have a substantial impact on material issues.

Section 3: That Section 122-28 of the Code of Ordinances is hereby amended as follows:

**Sec.122-28. Replacement or reconstruction.**

(a) Applicability. This section applies both to voluntary reconstruction or replacement of dwelling units and involuntary reconstruction or replacement of dwelling units. Nothing in this section is intended to supersede applicable Federal Emergency Management Agency requirements for elevation in flood zones.

(b) Dwelling units (residential). Residential dwelling units may be replaced at their existing nonconforming density, location and three-dimensional building envelope. ~~Except as provided in subsection (f) of this section, d~~Dwelling units involuntarily destroyed do not require variances in order to be reconstructed or replaced. If a voluntary reconstruction or replacement occurs and if the dwelling units exist or existed in a noncomplying building or structure, the reconstruction or replacement that ~~exceeds 66 percent of the assessed or appraised value~~ increases the non-conformity of the building or structure shall require a variance granted by the planning board. In a voluntary reconstruction of a structure on a corner lot, the property owner must apply to the planning board for all

necessary setback variances. All noncomplying accessory structures to the principal building or structure (e.g., a shed, pool, fence, etc., but not including a condominium clubhouse) shall also require a variance in order to be enlarged, reconstructed, or replaced, either voluntarily or involuntarily. If a proposed reconstruction or replacement would not otherwise require a variance but would add a new building or structure to the site to accommodate allowed density, a variance shall be required for the additional building or structure. A residential building in which one or more units hold a residential transient use business tax receipt shall be deemed residential for the purposes of this section. Variances which would increase density or intensity beyond that maximum allowed on the particular property or lot by the Land Development Regulations shall be prohibited.

Section 4: That Section 122-32(g) is hereby added to the Code of Ordinances as follows:

**Sec. 122-32. Additional Regulations**

\* \* \* \* \*

(g) Enlargement and Extensions: Non-conforming structures which are used in a manner conforming to the provisions of this chapter may be enlarged or expanded provided that the existing non-conformity is not further increased, nor any new non-conformity created.

Section 5: Public Notice. The adoption of this Ordinance shall be evidenced by placement of a notice in a newspaper of general circulation within the City, in accordance with Chapter 50, Florida Statutes, within two weeks after adoption of this Ordinance. A copy of this Resolution shall also be posted at City Hall for the next one hundred and eighty (180) days.

Section 6: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 7: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 8: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

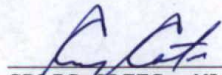
Read and passed on first reading at a regular meeting held  
this 2nd day of October, 2013.

Read and passed on final reading at a regular meeting held  
this 16 day of October, 2013.

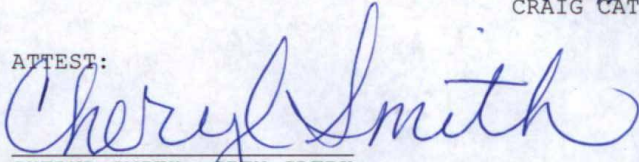
Authenticated by the presiding officer and Clerk of the  
Commission on 17 day of October, 2013.

Filed with the Clerk October 17, 2013.

Mayor Craig Cates	<u>Yes</u>
Vice Mayor Mark Rossi	<u>No</u>
Commissioner Teri Johnston	<u>Yes</u>
Commissioner Clayton Lopez	<u>Yes</u>
Commissioner Billy Wardlow	<u>Yes</u>
Commissioner Jimmy Weekley	<u>Yes</u>
Commissioner Tony Yaniz	<u>Yes</u>

  
CRAIG CATES, MAYOR

ATTEST:

  
CHERYL SMITH, CITY CLERK

STATE OF FLORIDA  
DEPARTMENT OF ECONOMIC OPPORTUNITY

In re: A LAND DEVELOPMENT REGULATION  
ADOPTED BY THE CITY OF KEY WEST,  
FLORIDA, ORDINANCE NO.13-18

RECEIVED  
CITY CLERK'S OFFICE  
2013 DEC 26 PM 1:03  
CITY OF KEY WEST  
KEY WEST, FLORIDA

FINAL ORDER APPROVING  
CITY OF KEY WEST ORDINANCE NO. 13-18

The Department of Economic Opportunity ("Department") hereby issues its Final Order, pursuant to §§ 380.05(6) and (11), Fla. Stat. (2012), approving land development regulations adopted by the City of Key West, Florida, Ordinance No. 13-18 (the "Ordinance").

FINDINGS OF FACT

1. The City of Key West is designated as an area of critical state concern pursuant to § 380.05(1), Fla. Stat. (2012), and Chapter 28-36, Fla. Admin. Code. Land development regulations adopted by the City of Key West do not become effective until approved by the Department by final order. §§ 380.05(6) and (11), Fla. Stat.
2. The Ordinance was adopted by the City of Key West on October 17, 2013, and rendered to the Department on November 20, 2013.
3. The Ordinance amends the City's land development regulations as follows:
  - a. The Ordinance amends Chapter 90 of the City Code of Ordinance entitled "Administration" by amending Section 90-392 and adding a new section 90-398 to authorize the City Planner to issue administrative variances; establish procedures and criteria for variance applications; provide for notice to adjoining property owners; and provide for public hearings and appeals.

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- b. The Ordinance amends Chapter 122 entitled "Zoning" by amending Section 122-28 to provide that residential dwelling units may be replaced at their existing location and three-dimensional building envelope in addition to their existing non-conforming density, and to prohibit variances that would increase density or intensity beyond the maximum allowed by the City's land development regulations.
- c. The Ordinance adds a new subsection (g) to Section 122-32 to allow for the enlargement or expansion of non-conforming structures that are used in a manner authorized by the regulations so long as the existing non-conformity is not increased and no new non-conformity is created.

CONCLUSIONS OF LAW

4. The Department is required to approve or reject land development regulations that are adopted by any local government in an area of critical state concern. §§ 380.05(6) and (11), Fla. Stat.

5. "Land development regulations" include local zoning, subdivision, building, and other regulations controlling the development of land. § 380.031(8), Fla. Stat. The regulations adopted by the Ordinance are land development regulations.

6. All land development regulations enacted, amended, or rescinded within an area of critical state concern must be consistent with the principles for guiding development for that area. §§ 380.05(6) and (11), Fla. Stat. The Principles for Guiding Development for the City of Key West Area of Critical State Concern are set forth in Rule 28-36.003(1), Fla. Admin. Code ("Principles").

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7. The Ordinance is consistent with the Principles as a whole and specifically furthers the following Principle in Rule 28-36.003(1), Fla. Admin. Code:

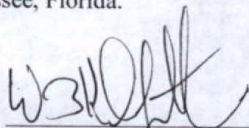
(h) Protection of the public health, safety, welfare, and economy of the City of Key West, and the maintenance of Key West as a unique Florida resource.

8. The Ordinance is consistent with the City of Key West Comprehensive Plan Future Land Use Element Policy 1-1.5.1 and Objective 1-31.29.

WHEREFORE, IT IS ORDERED that City of Key West Ordinance No. 13-18 is found to be consistent with the Principles for Guiding Development for the City of Key West Area of Critical State Concern and is hereby APPROVED.

This Order becomes effective 21 days after publication in the Florida Administrative Register unless a petition is timely filed as described in the Notice of Administrative Rights below.

DONE AND ORDERED in Tallahassee, Florida.



WILLIAM B. KILLINGSWORTH  
Director, Division of Community Development  
Department of Economic Opportunity

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES, REGARDING THE AGENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN

FINAL ORDER NO. DEO-13-129

THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND II, FLORIDA ADMINISTRATIVE CODE. AT A FORMAL ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, CONDUCT CROSS-EXAMINATION AND SUBMIT REBUTTAL EVIDENCE, SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS, AND FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING, YOU MUST FILE WITH THE AGENCY CLERK OF THE DEPARTMENT OF ECONOMIC OPPORTUNITY A WRITTEN PLEADING ENTITLED, "PETITION FOR ADMINISTRATIVE PROCEEDINGS" WITHIN 21 CALENDAR DAYS OF PUBLICATION OF THIS NOTICE. A PETITION IS FILED WHEN IT IS **RECEIVED** BY:

AGENCY CLERK  
DEPARTMENT OF ECONOMIC OPPORTUNITY  
OFFICE OF GENERAL COUNSEL  
107 EAST MADISON STREET, MSC 110  
TALLAHASSEE, FLORIDA 32399-4128  
FAX NUMBER 850-245-7150  
CLERK'S EMAIL: JAMES.BELLFLOWER@DEO.MYFLORIDA.COM

THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.201(2), FLORIDA ADMINISTRATIVE CODE.

A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY

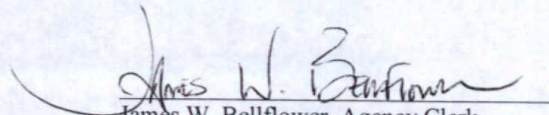
**FINAL ORDER NO. DEO-13-129**

RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.

YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER.

**CERTIFICATE OF FILING AND SERVICE**

I HEREBY CERTIFY that the original of the foregoing Final Order was filed with the undersigned designated Agency Clerk and that true and correct copies were furnished to the persons listed below by the methods indicated this 20 day of December, 2013.

  
James W. Bellflower, Agency Clerk  
Department of Economic Opportunity  
107 East Madison Street, MSC 110  
Tallahassee, FL 32399-4128

**By U.S. Mail:**

The Honorable Craig Cates  
Mayor, City of Key West  
3216 Flagler Avenue  
Key West, FL 33040

Cheryl Smith, City Clerk  
3216 Flagler Avenue  
Key West, FL 33040

Donald Leland Craig, AICP  
City Planner  
3140 Flagler Avenue  
Key West, FL 33040

**By Hand Delivery or Interagency Mail:**

Rebecca Jetton, ACSC Administrator, DEO Tallahassee



## EXECUTIVE SUMMARY

**To:** Bogdan Vitas, Jr., City Manager  
**From:** Donald Leland Craig, AICP, Planning Director  
**Meeting Date:** October 16, 2013  
**RE:** Administrative Variances Ordinance

**Action Statement:** **ADOPTION OF AN ORDINANCE AMENDING CHAPTER 90 OF THE CODE OF ORDINANCES ENTITLED "ADMINISTRATION" BY AMENDING SECTION 90-392 AND BY ADDING SECTION 90-398 TO AUTHORIZE THE CITY PLANNER TO ISSUE ADMINISTRATIVE VARIANCES; ESTABLISHING PROCEDURES FOR AN APPLICATION FOR ADMINISTRATIVE VARIANCES; ESTABLISHING A PROCEDURE FOR PROVIDING NOTICE TO ADJOINING PROPERTY OWNERS OF THE CITY PLANNER'S INTENT TO ISSUE AN ADMINISTRATIVE VARIANCE; ESTABLISHING CRITERIA FOR THE ISSUANCE OF ADMINISTRATIVE VARIANCES; ESTABLISHING A PROCEDURE FOR PUBLIC HEARINGS ON APPLICATIONS FOR ADMINISTRATIVE VARIANCES; AMENDING CHAPTER 122 ENTITLED "ZONING" BY AMENDING SECTION 122-28 AND ADDING SECTION 122-32 (G) FOR ESTABLISHING PROCEDURES FOR NONCONFORMITIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE**

**Request:** Approval an Ordinance to amend Chapter 90 of the City's Land Development Regulations (LDRs) to permit the Planning Director to issue administrative variances; and to amend Section 122-28 establishing procedures for replacement or reconstruction of structures, and adding Section 122-32(g) on the enlargement and extension of non-conformities.

**Location:** City wide

**Strategic Plan:** The proposed Ordinance is consistent with the Strategic Plan's directive to the City Government to provide excellent, efficient and timely service while reducing the cost of governing, inclusive of the amount of time need to obtain permits from the City.

**Background:**

In a letter dated July 26, 2011, the City Planner recommends to the City Manager that the Planning Department initiate a new approach to variance applications. In the letter, the City Planner states that the current procedure is cumbersome in execution and administration and often confusing to the public since the majority of variance applications are recommended for denial by Staff, while the Planning Board often approves the requests. The number of variance applications received is up significantly since 2011. A search of the Planning Department variance requests shows for the years 2011 and 2012:

- In 2011, of the twenty-two (22) variance or waiver requests heard by the Planning Board, eleven (11) could have been administrative variances or waivers;
- In 2012, through November, of the thirteen (13) variance or waiver requests heard by the Planning Board, seven (7) could have been administrative variances or waivers.

In order to deal with these issues, the Planning Department proposes an amendment to the Code of Ordinances (the "Code") that will reduce the number of variances heard by the Planning Board by offering a mechanism that permits the Planning Director to administratively grant certain variances to the Land Development Regulations. The proposed amendment makes it easier for property owners requiring minimal relief to attain approval without going through the long process of a public hearing and Planning Board approval.

The proposed Ordinance, as revised after first reading by City Commission on October 2, 2013, would authorize the City Planner to grant the following types of variances or waivers based on the proposed standards in subsections 90-398 (h) and (i):

1. Reduction of front and rear yard setback requirements by no more than 10 feet; and side yard setbacks by no more than 20%. For example:

HMDR		SF	
Required Setback	Maximum Reduction	Required Setback	Maximum Reduction
Front – 10'	(N/A)	Front – 30'	Front – 10'
Side – 5'	Side – 1'	Side – 5'	Side – 1'
Rear – 15'	Rear – 10'	Rear – 25'	Rear – 10'
Street Side – 7.5'	Street Side – 1.5'	Street Side – 10'	Street Side – 2'

2. Reduction in buffer yard requirements by no more than 10%;
3. Reduction in landscaping required for off-street parking areas by no more than 20%.

Additionally, the Planning Department proposes that Code Section 122-28 be amended concerning the voluntary and involuntary reconstruction or replacement of dwelling units by adding language and deleting the 66% rule; and Code Section 122-32(g) for establishing procedures for nonconformities.

On October 2, 2013, the City Commission passed the proposed Ordinance on first reading with three main changes:

1. The administrative variance for off-street parking requirements was deleted from Section 90-398(b).
2. Language was added to elaborate on the "good and sufficient cause" standard for administrative variance approval in Section 90-398(h)(1).
3. The public notice period was changed from 10 working days to 30 calendar days in Section 90-398(k) and (n).

Additionally, Staff deleted what was Section 90-398(d), which listed application fees for administrative variance applications. It is not necessary to codify application fees because the adopted City Code already provides for these fees to be established by resolution of the City Commission, pursuant to Code Section 90-392(a). This deletion necessitated the relettering of the subsections in Section 90-398.

All of the changes made after first reading are reflected in the proposed Ordinance with double strikethroughs and double underlines. Staff's analysis below is also revised to reflect these changes.

**Previous City Actions:**

City Commission	October 2, 2013, Passed on first reading
Planning Board	June 20, 2013, PB Res 2013-32
Planning Board	February 21, 2013, PB Res 2013-07

**Planning Staff Analysis:**

The Planning Department recommends a formal procedure for the consideration and granting of administrative variances and waivers. The highlights of the proposed procedure are:

- The applicant submits an application on form approved by the city planner;
- The city planner reviews the application and has three weeks from the DRC meeting to render a proposed decision;
- Planning Staff will notice the proposed decision by regular mail to property owners within 300 feet of the subject property;
- Planning Staff shall post notice on the property;
- After 30 calendar days of posting, review of all public responses, and the finding that the proposed variance application has complied, the city planner shall issue a written decision;
- Except for special accessibility setback variances as provided for in Section 90-398(j), an administrative variance shall only be granted if all of the standards in Sections 90-398(h) and (i) are met;
- A public hearing can be requested in writing by the applicant or an adversely affected property owner or resident during the required 30 calendar days of noticing.

The attached Exhibit 1 is a flow chart titled "Administrative Variance," which shows the timeline of the proposed review procedure.

The criteria for the proposed administrative variance and waiver in Section 90-398(h) are:

- 1) The applicant shall demonstrate a showing of good and sufficient cause, which is defined in the proposed Ordinance;
- 2) Failure to grant the variance would result in exceptional hardship to the applicant;
- 3) Granting the variance will not result in increased public expenses, create a threat to public health and safety, create a public nuisance, or cause fraud or victimization of the public;
- 4) The property has unique or peculiar circumstances, which apply to this property, but which do not apply to other properties in the same zoning district;
- 5) Granting the variance will not give the applicant any special privilege denied to other properties in the immediate neighborhood in terms of the provisions of the Land Development Regulations or established development patterns;
- 6) Granting the variance is not based on disabilities, handicaps or health of the applicant or members of her/his family; and
- 7) The variance is the minimum necessary to provide relief to the applicant.

**Options / Advantages / Disadvantages:**

**Option 1: Adoption of the proposed Ordinance.**

1. **Consistency with the City's Strategic Plan, Vision, and Mission:** The proposed Ordinance is consistent with the Strategic Plan's directive to the City Government to provide excellent, efficient and timely service while reducing the cost of governing, inclusive of the amount of time need to obtain permits from the City.
2. **Financial Impact:** No direct cost to the City. Over time the city will see a decline in the costs, staff time and processing fees, because the cost of the administrative variance is less for the applicant.

**Option 2: Do not adopt the proposed Ordinance.**

1. **Consistency with the City's Strategic Plan, Vision, and Mission:** Does not allow for the timely processing of applications, and therefore is inconsistent with the strategic plan.
2. **Financial Impact:** No direct impact to the City.

**Recommendation:**

The Planning Department recommends **adoption** of the proposed Ordinance on second reading.